



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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IN THE MATTER OF CLAIM AGAINST THE  
DEALER BOND OF HANK'S AUTO, INC.

Case No. TR-01-0029

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**FINAL DECISION**

Mr. Arlan D. Lothe filed a motor vehicle dealer bond claim dated March 15, 2001 with the Wisconsin Department of Transportation (the "Department") against Hank's Auto, Inc. (the "Dealer"). On June 12, 2001, the claim, along with the documents gathered by the Department in its investigation, was referred to the Division of Hearings and Appeals for hearing. The parties were invited to file any additional information they wished to have considered before issuance of a preliminary determination. Old Republic Surety Company submitted a letter to the Department dated June 18, 2001, which the Department forwarded to the Division of Hearings and Appeals. Old Republic also submitted a separate letter to the Division of Hearings and Appeals dated June 28, 2001. Counsel for the Dealer sent a letter dated July 16, 2001.

On February 21, 2002, the undersigned issued a Preliminary Determination and informed the parties by letter addressed as shown below that if no timely objection to the Preliminary Determination were received by March 25, 2002, then the Preliminary Determination would be subject to adoption as the Final Decision in the matter. The undersigned has not received any requests for a contested case hearing. Accordingly, the Preliminary Determination is adopted as the final decision of the Department of Transportation pursuant to Wis. Adm. Code § Trans 140.26(5)(d).

The parties to this proceeding are certified as follows:

Mr. Arlan D. Lothe  
1415 Dyke Drive  
Adams, WI 53910

American Home Assurance Company  
175 Water Street  
New York, NY 10038

Hank's Auto, Inc.  
2410 West Grand Avenue  
Wisconsin Rapids, WI 54495

Old Republic Surety Company  
P.O. Box 941  
Brookfield, WI 53008-0941

## **FINDINGS OF FACT**

1. Hank's Auto, Inc. (the "Dealer") is a motor vehicle dealer licensed by the Department pursuant to Wis. Stat. § 218.0111. The Dealer's business location is 2410 W. Grand Avenue, Wisconsin Rapids, Wisconsin.
2. The Dealer had surety bond number RLI0492011 issued by Old Republic Surety Company with a beginning date of January 21, 1998. The bond was "continuously in full force and effect" until the effective date of Old Republic's cancellation of the bond, March 30, 2000.
3. The Dealer also had surety bond number 22-01-83 from American Home Assurance Company continuously in force from January 21, 2000 through at least the Department's referral of the matter to the Division of Hearings and Appeals.
4. On February 16, 2000, the Dealer sold Lothe a 1990 Ford F-250 truck, VIN 1FTEF26N7LLB26569 (the "Vehicle"), with plow for \$9,000.00 plus taxes and fees of \$562.00 for a total cost of \$9,562.00. The mileage on the Vehicle at the time of sale was 89,274 miles. The Vehicle was sold "As Is" with no warranties, expressed or implied.
5. The Dealer prepared and displayed a Wisconsin Buyers Guide for the Vehicle indicating that the "Brakes System" (parking brake and service brakes) and the "Steering Components" met the standards of Wis. Admin. Code Chapter Trans 305.
6. In conducting the used vehicle inspection, the Dealer decided not to perform any disassembly of the brakes. If the Dealer had disassembled the brakes, the Dealer would have discovered that the parking and service brakes did not meet the standards of Wis. Admin. Code § Trans 305.17.
7. Six days after the purchase, on February 22, 2000, Lothe had repairs done totaling \$980.92 involving mainly repairs to brakes and steering components of the Vehicle. The repairs done to the brakes were repairs that were necessary for the Vehicle to meet the standards of Wis. Admin. Code Chapter Trans 305. The Dealer, in the exercise of reasonable care, should have discovered the need for these repairs in conducting its used vehicle inspection. If the Dealer had discovered the need for these repairs the Dealer would have checked the "Not Legal" box on the Wisconsin Buyers Guide respecting the "Brakes System". The cost for the parts for the brake repairs totaled \$213.86 (rotor, rear brake shoes, self-adjuster cables, park brake cables, rear shoe core) and the cost of the labor amounted to \$247.50. With tax of \$25.37, the total cost of the brake repairs was \$486.73.
8. On April 17, 2000, Lothe had additional repairs done involving the steering, specifically the "steering sector". Lothe also had a turn signal and back up light repaired. The total cost of these repairs was \$444.81.
9. The repairs for the steering components done on both February 22, 2000 and on April 17, 2000 have not been shown to have been necessary for the Vehicle to meet the standards of Wis. Admin. Code § Trans 305.29, and thus the Dealer was not required to mark the "Not Legal" box in the Wisconsin Buyers Guide respecting "Steering Components".
10. The Wisconsin Buyers Guide also represented that there were no "signs of excessive oil consumption" and that there were no "known or visible leaks, excluding minor seepage."

11. The previous owner of the Vehicle reported that when he owned the Vehicle it was leaking oil and had blow-by visible exhaust. He sold the Vehicle at wholesale in December 1999.

12. The Dealer performed the used vehicle inspection on the Vehicle on December 6, 1999, almost immediately after acquiring it. Either at the time of the used vehicle inspection or in the approximate two months thereafter that the Dealer held the Vehicle for sale, the Vehicle showed signs of excessive oil consumption that the Dealer either discovered or should have discovered in the exercise of reasonable care. The Vehicle also had visible oil leakage that was more than minor seepage that the Dealer either discovered or should have discovered in the exercise of reasonable care.

13. When Lothe purchased the Vehicle it used about one quart of oil for every 50 miles driven.

14. On or about March 13, 2000, Lothe replaced the engine in the Vehicle at a total cost of \$2,686.73. The replacement engine came with a three-year or 50,000 mile warranty.

15. There is insufficient evidence to establish that it was necessary for Lothe to expend \$2,686.73 to remedy the excessive oil consumption and the oil leakage. Although Lothe has demonstrated that he incurred at least some cost in remedying the oil consumption and oil leak problems, there is insufficient information presented to make a determination on the amount of this cost.

16. On September 25, 2000, Lothe paid his attorney \$217.72 for legal services in his dispute with the Dealer concerning the Vehicle.

17. On or about March 15, 2001, Lothe submitted a dealer bond claim in the amount of \$4,330.18, the components of which were all the repairs described in paragraphs 7, 8 and 14 above, as reflected by invoices dated February 22, 2000, March 24, 2000, April 17, 2000, and the attorney fees paid on September 25, 2000.

18. Lothe's claim arose on February 16, 2000, the day he purchased the Vehicle. The bond claim was filed within three years of the ending date of the last day of the respective periods covered by both the bond issued by Old Republic Surety and the separate bond issued by American Home Assurance Company. Both the bond of American Home Assurance Company and the bond of Old Republic Surety Company were in effect on February 16, 2000 when Lothe's claim arose.

19. Lothe has established that he suffered an actual loss of \$486.73 as a result of the Dealer's failure to reflect accurately the condition of the brakes on the Wisconsin Buyers Guide. This constitutes an act that would be grounds for revocation or suspension of the Dealers motor vehicle dealer license.

20. Lothe has also established that the Dealer failed to reflect accurately on the Wisconsin Buyers Guide the consumption of oil and leakage of oil. This constitutes an act that would be grounds for revocation or suspension of the Dealer's motor vehicle dealer license. Lothe has also demonstrated that this act caused him an actual loss, but he not established the amount of that loss.

21. Lothe has not established that any act of the Dealer that would be grounds to suspend or revoke the Dealer's license caused him a loss respecting the steering components.

### DISCUSSION

The procedure for determining claims against dealer bonds is set forth in the Wisconsin Administrative Code at Chapter Trans 140, Subchapter II. Section Trans 140.21(1) provides in relevant part as follows:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.

(b) The claim arose during the period covered by the security.

(c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116(1)(a) to (gm), (im)2., (j), (k), (m), (n), (nm) or (p), Stats.

\* \* \* \*

(d) The claim must be made within 3 years of the last day of the period covered by the security....

Accordingly, to allow a claim, a finding must be made that the Dealer violated one of the subparagraphs of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed.

Wisconsin Admin. Code § Trans 139.04(5) requires dealers to disclose whether a used vehicle meets equipment requirements such that it can be legally operated on the public roads. Dealers are required to disclose deficiencies in the required equipment that the dealer "can find using reasonable care." *Id.* For vehicle inspections, the term "reasonable care" is defined in Wis. Admin. Code § Trans 139.02(15), which specifically addresses the scope of the required brakes inspection as follows: "Brakes may require some disassembly to satisfy the requirements in ch. Trans 305." The Dealer here made the deliberate determination not to engage in any disassembly of the brakes in the used vehicle inspection, and thereby willfully failed to comply with section Trans 139.04. This violation of § Trans 139.04(4) constitutes a violation of Wis. Stat. § 218.0116(1)(bm), which provides that a motor vehicle dealer license may be revoked or suspended for willfully failing to comply with any rule or regulation of the Department promulgated under Wis. Stat. §§ 218.0101 to 218.0163. Section Trans 139.04(4) is such a rule. This violation caused Lothe an actual loss of \$486.73. This was the cost necessary to make the brakes comply with state vehicle equipment requirements, which is what Lothe bargained for when he purchased the Vehicle.

There is insufficient evidence that the steering components on the vehicle did not meet the standards of Wis. Admin. Code § Trans 305.29, and thus insufficient evidence to establish that the Wisconsin Buyer's Guide inaccurately described the steering components to be "Legal."

Wisconsin Admin. Code § Trans 139.04(4) requires dealers to disclose general vehicle condition and to disclose certain conditions that the dealer can find using reasonable care, including excessive oil consumption and known or visible leaks (excluding minor seepage). The oil consumption and leakage was known to the Vehicle's prior owner and the Dealer in the exercise of reasonable care either discovered or should have discovered these deficiencies and disclosed them in the Wisconsin Buyers Guide. This was a violation of section Trans 139.04(5), which is an act for which a dealer's license may be suspended or revoked under Wis. Stat. § 218.0116(1)(bm). Lothe sustained an actual loss as a result of this violation, though the loss was not the \$2,686.73 cost for the warranted engine that Lothe had installed. Lothe has not established that all the work performed by this invoice of March 24, 2000 was necessary for him to receive what he bargained for, specifically, a Vehicle without excessive oil consumption or visible leaks, purchased "as is" with no warranties.

Lothe's claim for attorney's fees may not be allowed in a claim against a dealer bond. Recovery of attorney fees is expressly excluded by Wis. Admin. Code § Trans 140.21(2)(e).

The separate bonds issued by American Home Assurance Company and Old Republic Surety Company were in effect when the claim arose, so both bonds are obligated on the claim.

### **CONCLUSIONS OF LAW**

1. The claim of Arlan Lothe arose on February 16, 2000, the date he purchase the Vehicle from the Dealer. The separate surety bonds issued to the Dealer by both American Home Assurance Company and by Old Republic Surety Company were in effect on February 16, 2000. The claim arose during the period covered by both surety bonds.
2. Lothe filed a motor vehicle dealer bond claim against the Dealer on or about March 15, 2001. The bond claim was filed within three years of the last day of the respective periods covered by the bonds of both American Home Assurance Company and Old Republic Surety Company. The claim is timely filed pursuant to Wis. Adm. Code § Trans 140.21(1)(d). Both bonds are obligated against Lothe's claim.
3. The Dealer's failure to conduct an appropriate inspection of the brakes system required by Wis. Admin. Code § Trans 139.04(5) and to disclose the deficiencies in the brakes system in the Wisconsin Buyers Guide was a violation of a Department rule that would provide grounds for suspension or revocation of the Dealer's motor vehicle dealer license under Wis. Adm. Code § Trans 140.21(1)(c). Lothe's actual loss from this violation was \$486.73.
4. The Dealer's act in representing the Vehicle's steering components as meeting equipment requirements did not violate Wis. Admin. Code § Trans 139.04(5).
5. The Dealer's act in representing the Vehicle as not showing signs of excessive oil consumption and not having known or visible leaks (excluding minor seepage) violated Wis. Admin. Code. § Trans 139.04(4) and would be grounds to suspend or revoke its license under Wis. Stat. § 218.0116(bm). Lothe sustained a loss as a result of this violation, but he has not met

his burden to show that the \$2,686.73 that he is claiming is the amount required for the Vehicle to be brought to the condition as the Dealer represented in the Wisconsin Buyers Guide.

6. The attorney fees that Lothe incurred are not recoverable in a claim against a dealer bond. Wis. Admin. Code § Trans 140.21(2)(e).
7. The Division of Hearings and Appeals has authority to issue the following order.

### **ORDER**

The claim filed by Arlan Lothe against the motor vehicle dealer bonds of Hank's Auto, Inc. is **ALLOWED** to the extent of \$486.73. All other aspects of the claim are **DENIED**.

Dated at Milwaukee, Wisconsin on April 2, 2002.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_  
William S. Coleman, Jr.  
Administrative Law Judge

## **NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.